

4859

No.

United States
Circuit Court of Appeals
For the Ninth Circuit. 20

GRAVER CORPORATION, a Corporation,
Plaintiff-in-Error,

vs.

HERCULES GASOLINE COMPANY, a Corpora-
tion,
Defendant-in-Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.



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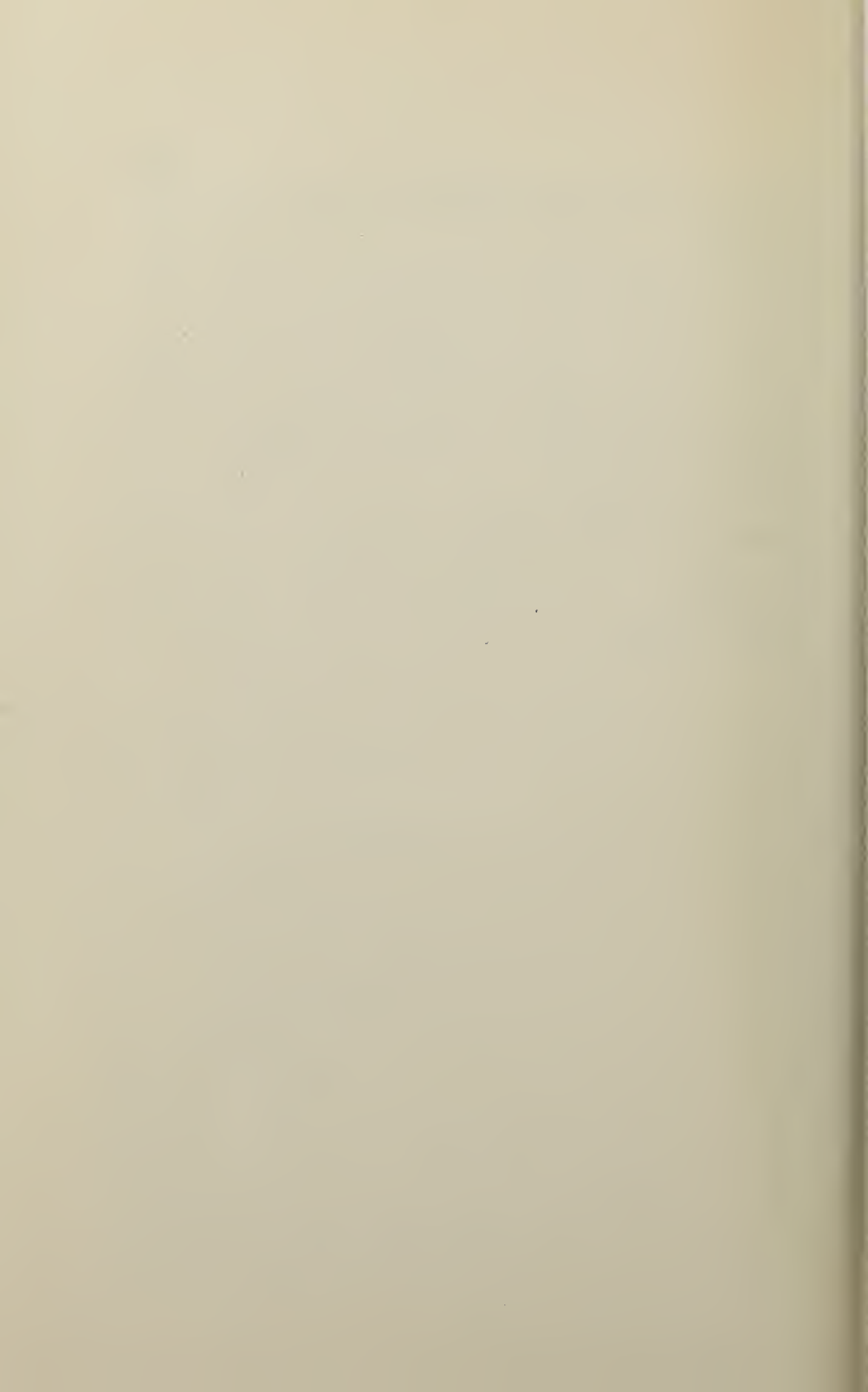
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff-in-Error:

WILBUR BASSETT, Esq., Van Nuys Building.
CARROLL ALLEN, Esq., Stock Exchange Building,
Los Angeles, California.

For Defendant-in-Error:

McCOMB & HALL, Esqs., Bank of Italy Building,
Los Angeles, California.

United States of America, ss.

To HERCULES GASOLINE CO., a corporation,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 6th day of May, A. D. 1926, pursuant to writ of error in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action at law entitled Hercules Gasoline Co., a corporation, plaintiff vs. Graver Corporation, defendant, and you are directed to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WM. P. JAMES
United States District Judge for the Southern
District of California, this 7th day of April,
A. D. 1926, and of the Independence of the
United States, the one hundred and fiftieth

Wm P James

U. S. District Judge for the Southern
District of California.

[Endorsed]: No. 1735-B-Law In the United
States Circuit Court of Appeals for the Ninth Circuit
Hercules Gasoline Co. vs. Graver Corporation Citation
Received copy of the within citation this 8th day of

April, 1926. McComb & Hall, attorneys for plaintiff and respondent in error. Filed Apr. 12, 1926 Chas. N. Williams, Clerk, by L. J. Cordes deputy clerk.

United States of America, ss.

The President of the United States of America,

To the Judges of the District Court of the United States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between Hercules Gasoline Co., a corporation, plaintiff, vs. Graver Corporation, defendant, a manifest error hath happened, to the great damage of the said Graver Corporation as by its complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 6th day of May next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit

Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. WILLIAM HOWARD TAFT, Chief Justice of the United States, this 7th day of April in the year of our Lord one thousand nine hundred and twenty-six and of the Independence of the United States the one hundred and fiftieth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R S Zimmerman

Deputy Clerk.

The above writ of error is hereby allowed.

Wm P James

Judge.

I hereby certify that a copy of the within Writ of Error was on the 7th day of April, 1926, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

[Seal]

Chas. N. Williams,

Clerk of the District Court of the United States for the Southern District of California.

By L. J. Cordes

Deputy Clerk.

[Endorsed]: No. 1735-B-Law United States Circuit Court of Appeals for the Ninth Circuit Hercules Gasoline Co. Plaintiff in Error vs. Graver Corporation Defendant in Error Writ of Error Filed Apr. 7, 1926. Chas N. Williams, clerk, by L. J. Cordes, deputy clerk.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

HERCULES GASOLINE COM-)
PANY, a corporation, ()
Plaintiff, ()
vs () COMPLAINT
((For Money)
)
GRAVER CORPORATION, ()
a corporation, ()
Defendant,)

Plaintiff complains of defendant and for cause of action alleges:

I.

That plaintiff is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California; that defendant is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of Illinois and doing business within the State of California;

II.

That on or about February 7, 1924, plaintiff and defendant entered into a certain agreement in writing wherein and whereby defendant agreed by and with plaintiff that upon plaintiff producing due evidence of its having acquired title to a certain steel tank, described as Graver Tank No. 2, defendant would ship promptly as directed, and not later than August 1, 1924, steel products to be ordered by plaintiff of the aggregate price of thirty-six thousand dollars (\$36,000.00) at prices prevailing at date of shipment, which plaintiff agreed to accept and pay for at said price, and defendant agreed to accept in part payment and exchange for said steel products said Graver Tank No. 2 at the agreed price of twenty-seven thousand dollars (\$27,000.00) and credit plaintiff said sum of twenty-seven thousand dollars (\$27,000.00) upon the aggregate purchase price of said steel products, and defendant further agreed that said steel products would be erected by or at its direction in or near Los Angeles at the prevailing price for this class of work;

III.

That on or about April 4, 1924, and prior to the furnishing of any of said steel products by defendant, and despite the fact that plaintiff had theretofore produced due evidence of its having acquired title to said Graver Tank No. 2, and was ready and willing to perform each and all of the terms and conditions of said agreement upon its part to be performed, defendant stated to plaintiff that it would not receive or accept

said Graver Tank No. 2 in part payment or in exchange for said steel products or allow plaintiff said credit of twenty-seven thousand dollars (\$27,000.00) therefor in part payment of said steel products, and refused to furnish said steel products upon the terms stated in said agreement, and repudiated and refused to abide by or perform said agreement, all to plaintiff's damage in the sum of nineteen thousand two hundred dollars (\$19,200.00);

WHEREFORE, plaintiff prays judgment against defendant in the sum of nineteen thousand two hundred dollars (\$19,200.00) with interest thereon from the date of the filing of this complaint and for plaintiff's costs, and for such other and further relief as may be meet and proper.

McCOMB & HALL,

Attorneys for Plaintiff

State of California, County of Los Angeles—ss.

C. R. BIRD being duly sworn says: That he is General Superintendent of Hercules Gasoline Company, plaintiff in the foregoing entitled matter that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true; that he makes this verification for and on behalf of said corporation.

C. R. BIRD

General Superintendent Hercules Gasoline Company

Subscribed and sworn to before me this 28th day of April 1924

[Seal]

T. W. MASON

Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 14, 1928.

(ENDORSED): FILED APR 28 1924 423 P M L E LAMPTON, County Clerk By Roy Goff Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES.

- - - - -)
HERCULES GASOLINE COM-))
PANY, a corporation,))
))
	Plaintiff,	) No. 142550.
	)	) ORDER FOR
vs.	)	) REMOVAL.
))
GRAVER CORPORATION,))
a corporation,))
))
	Defendant.)
))
- - - - -)

[F. C. C. Judge] on the 12th day of May, 1924, This cause coming on for hearing upon petition and bond of defendant for an order transferring this cause to the United States District Court, for the Southern District of California, Southern Division, and it appearing to the Court that the defendant has filed its petition for such removal in due form of law, and that the defendant has filed its bond, with good

and sufficient surety, as provided by law, and that defendant has given plaintiff due and legal notice thereof, and it appearing to the Court that this is a proper cause for removing to said District Court,

NOW THEREFORE, said petition and bond are hereby accepted, and IT IS HEREBY ORDERED AND ADJUDGED that this cause be, and it is hereby, removed to the United States District Court, for the Southern District of California, Southern Division, and the Clerk is hereby directed to make up the record of said case for transmission to said Court forthwith.

Done in open court this 16 day of May, 1924.

FRANK C. COLLIER Judge.

STATE OF CALIFORNIA }
County of Los Angeles } ss

No. 142550

I, L. E. LAMPTON, County Clerk and ex-officio Clerk of the Superior Court do hereby certify the foregoing to be a full, true and correct copy of the original Complaint (For Money), Petition for Removal, Notice of Petition and Bond for Order of Removal, Minute Order Granting Petition for Removal and Order for Removal—HERCULES GASOLINE COMPANY, a corp., -vs- GRAVER CORPORATION, a corporation, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand

and affixed the seal of the Superior Court this 20th day of May, 1924.

L. E. LAMPTON, County Clerk

By D. M. Forbes,

[Seal]

Deputy Clerk

(ENDORSED) FILED MAY 16, 1924. L. E. LAMPTON, County Clerk, By Rugby Ross Deputy

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

HERCULES GASOLINE COM-)
PANY, a corporation,)

Plaintiff,)

-vs-

No. 1735-B.
DEMURRER.

GRAVER CORPORATION,)
a corporation,)

Defendant.)

Comes now the defendant herein and demurs to the complaint and for cause of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That said complaint is uncertain in this: that it does not appear therefrom how or in what manner plaintiff

has sustained any damages in the sum of \$19,200.00 or any amount.

III.

That said complaint is uncertain in this: that it does not appear from said complaint that the plaintiff could not, upon the breach of said contract, have purchased the equivalent of said steel and other products in this market at a price not in excess of the price or consideration agreed to be paid by plaintiff to defendant.

WHEREFORE DEFENDANT PRAYS: that plaintiff take nothing and that it recover its costs.

Carroll Allen

Atty for Deft

I hereby certify that in my opinion the foregoing demurrer is well founded in law and that the same is not interposed for delay.

Carroll Allen

Attorney for defendant.

[Endorsed]: No. 1735 Dept B. In the District Court of the United States, Southern District of California, Southern Division. Hercules Gasoline Company, a corporation, plaintiff, vs Graver Corporation, a corporation, defendant. Demurrer. Received copy of the within Demurrer this 14 day of June, 1924. McComb & Hall, Attorney for plaintiff. Filed Jun 16, 1924. Chas N. Williams, Clerk by Edmund L. Smith, Deputy Clerk. Carroll Allen Attorney at Law Stock Exchange Building Los Angeles, Cal.

At a stated term, to wit: the January, A. D. 1924 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the thirtieth day of June in the year of our Lord one thousand nine hundred and twenty-four.

Present:

The Honorable Benjamin F. Bledsoe, District Judge.

Hercules Gasoline Company,)	
a corporation,)	
)	
)	
)	
)	
vs.	)	No. 1735-B. Civ.
)	
Graver Corporation)	
)	
)	
Defendant.)	

This cause coming before the court at this time for hearing on Demurrer; Attorney McComb of Messrs. McComb & Hall appearing as counsel for the plaintiff, pursuant to consent of counsel for the respective parties, it is by the court ordered that the said demurrer be and the same is hereby overruled and that the defendant Graver Corporation have twenty days to answer the bill of complaint of said Hercules Gasoline Company, a corporation.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

)
 HERCULES GASOLINE COM-)
 PANY, a corporation,)
)
 Plaintiff,)
)
 vs.) No. 1735-B.
 GRAVER CORPORATION,) ANSWER
 a corporation,)
 Defendant.)

Comes now the defendant GRAVER CORPORATION, a corporation, and for answer to the complaint alleges:

I.

Defendant denies that during any or all of the times mentioned in the complaint, it was, or is now, doing business within the State of California.

II.

Defendant denies that on February 7, 1924, or at any time, plaintiff and defendant entered into a contract and agreement in writing, wherein and whereby defedant agreed by and with plaintiff that, upon plaintiff's producing due evidence of its having acquired title to a certain steel tank, described as Graver Tank No. 2, defendant would ship promptly as directed, and not later than August 1, 1924, steel products to be

ordered by plaintiff of the aggregate price of \$36,000.00 at prices prevailing at date of shipment, which plaintiff agreed to accept and pay for at said or any price, and denies that defendant agreed thereby or at all to accept in part payment and exchange for said steel products said Graver Tank No. 2 at the agreed price of \$27,000.00 and credit plaintiff with said sum of \$27,000.00 upon the aggregate purchase price of said steel products, and denies that defendant further agreed thereby or at all that said steel products would be erected by or at its direction in or near Los Angeles, California, at the prevailing price for that class of work.

III.

Defendant alleges that on or about said date, one S. Reid Holland, without authority of defendant, executed a purported agreement on behalf of defendant, by which defendant was obligated to carry out said contracts according to the terms set forth in the complaint. That said Holland at said date did not have any authority or right to execute said contract for and on behalf of defendant, and that defendant never at any time ratified or confirmed the same. That said purported contract was on or about February 7, 1924, sent from Los Angeles to defendant at its office and principal place of business at East Chicago, Indiana. That defendant refused to ratify, accept or be bound by said alleged contract, and so notified plaintiff. That on March 5, 1924, plaintiff by telegram requested defendant to give the matter of said alleged contract its

attention; otherwise, plaintiff would place the said order elsewhere and cancel the entire deal. That after the receipt of said telegram, defendant advised plaintiff that it would not be bound by said alleged contract, and that it would not fulfill same.

IV.

Defendant denies that on or about April 4, 1924, or at any time, or at all, plaintiff produced or submitted due or any evidence of its having acquired title to said Graver Tank No. 2. Defendant admits that, as hereinbefore alleged, it advised plaintiff that it would not fulfill said alleged contract or credit plaintiff with \$27,000.00 thereon on account of said Graver Tank No. 2, and admits that it refused to furnish said steel products upon the terms stated in said alleged agreement, but denies that plaintiff has sustained any damages in the sum of \$19,200.00, or any amount on said or any account.

WHEREFORE, defendant prays that plaintiff take nothing by this action, and that it recover its costs herein.

Carroll Allen

Attorney for Defendant.

STATE OF CALIFORNIA, }
County of Los Angeles. } ss.

CARROLL ALLEN, being by me first duty sworn, deposes and says: that he is the attorney for defendant in the above entitled action; that he has read the foregoing answer and knows the contents thereof; and that the same is true of his own knowledge, except as

to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That affiant makes this affidavit on behalf of defendant for the reason that defendant is a foreign corporation and none of its officers are within the County of Los Angeles, State of California.

Carroll Allen.

Subscribed and sworn to before me this 16th day of August, 1924

[Seal]

M. E. Davis

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 1735-B. In the District Court of the State of California Southern Division. Hercules Gasoline Company plaintiff vs. Graver Corporation, defendant. Answer. Received copy of the within Answer this 18 day of August, 1924. McComb & Hall Attorney for plaintiff. Filed August 19—1924 Chas. N. Williams Clerk R S Zimmerman Deputy. Carroll Allen attorney at law Stock Exchange Building Los Angeles Cal. 875-777. Attorney for defendant

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

HERCULES GASOLINE COM-))	
PANY, a corporation,))	
)	
	)	Plaintiff,)
)	
vs. )	)	DEMAND FOR
	)	BILL OF
	)	PARTICULARS.
GRAVER CORPORATION,))	
a corporation,))	
)	
	)	Defendant.)

TO THE PLAINTIFF ABOVE NAMED, AND TO MESSRS. McCOMB & HALL, ITS ATTORNEYS:

Defendant, Graver Corporation herein, hereby demands of you a bill of particulars and copy of the account sued and declared upon in the complaint herein.

DATED: September 18, 1925.

Carrol Allen
Wilbur Bassett
Attorneys for Defendant.

[Endorsed]: No. 1735-B. In the District Court of the United States, Southern District of California, Southern Division. Hercules Gasoline Company, a corporation, Plaintiff vs. Graver Corporation, a corporation, Defendant Demand for Bill of Particulars

Received copy of the within Bill this 18th day of Sept. 1925 McComb & Hall Attorney for plaintiff. Filed Oct 13 1925 Chas. N. Williams, Clerk By R. S. Zimmerman Deputy Clerk. Wilbur Bassett 432 Van Nuys Building Los Angeles Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

HERCULES GASOLINE COM-)	
PANY, a corporation, (
)
)
)
Plaintiff, (
)
)
vs. (	BILL OF
	(PARTICULARS.
)
)
GRAVER CORPORATION, (
a corporation,)	
)
)
Defendant.)	

To GRAVER CORPORATION, a corporation, and to CARROLL ALLEN, Esq., and WILBUR BASSETT, Esq., its attorneys:

In compliance with your demand therefor, plaintiff in the above entitled action hereby serves upon you its Bill of Particulars of its claim set forth in its complaint herein:

The sum of \$15,000.00, being the excess of the amount due from defendant on account of said Graver Tank No. 2 under the contract alleged in the complaint over the price which plaintiff could have ob-

tained therefor in the market nearest to the place at which it should have been accepted by the defendant and at such time after the breach of the contract as would have sufficed with reasonable diligence for the plaintiff to affect a resale.

The sum of \$4,200.00 on account of expenses incurred by plaintiff in repairing certain stills, tanks and other equipment and other detriment proximately caused by the breach of defendant's obligations set forth in plaintiff's complaint.

Plaintiff in furnishing this Bill of Particulars reserves the right to hereafter contend that it should not be bound thereby on the ground that no Bill of Particulars may be properly and lawfully demanded in this action.

Dated: September 23, 1925

McComb & Hall

Attorneys for Plaintiff.

[Endorsed]: Original No. 1735-B Civil. In the District Court of the United States, Southern District of California.....Division. Hercules Gasoline Company, a corporation, Plaintiff, vs. Graver Corporation, a corporation, Defendant. Bill of Particulars. Received copy of the within Bill this 23 day of Sept 1925 Carroll Allen, Wilbur Bassett Attorneys for Defdt. Filed Oct 13 1925 Chas. N. Williams, clerk by R. S. Zimmerman deputy clerk McComb & Hall Attorneys at Law 1014-15-16 Bank of Italy Bldg. Seventh & Olive Streets Los Angeles, Calif. Phone 821459 Attorneys for Plaintiff.

At a stated term, to wit: The January Term, A. D. 1926 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 25th day of January, in the year of Our Lord one thousand nine hundred and twenty-six.

Present:

The Honorable Edward J. Henning, District Judge.

Hercules Gasoline Company, a corporation,	Plaintiff,	} No. 1735-B Law.
vs.		
Graver Corporation, Defendant.		

This cause coming before the court for hearing on motion of defendant to vacate judgment and for new trial; Attorney McComb appearing for the plaintiff, and Wilbur Bassett, Esq., appearing for the defendant; said Wilbur Bassett, Esq., argues in behalf of the defendant; now, it is by the court ordered that the motion of defendant to vacate judgment and for new trial be denied.

At a stated term, towit: the July, A. D., 1925 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday, the sixteenth day of October, in the year of our Lord, one thousand nine hundred and twenty-five;

Present: The Honorable Edward J. Henning, District Judge.

Hercules Gasoline Company,)	
	Plaintiff,)
vs.	)	No. 1735-B. Law.
Graver Corporation,)	
	Defendant.)

This cause coming before the court for further trial without a jury, a jury trial having been waived; * * *

At the hour of 12:05 o'clock p. m., the court renders its oral opinion finding in favor of the plaintiff Hercules Gasoline Company and orders the plaintiff to prepare Findings of Fact and Conclusions of Law in accordance therewith; and

* * * * *

At the hour of 12:25 o'clock p. m., this cause is taken under advisement on the measure of damages upon briefs to be filed, plaintiff to file its brief within ten days and the defendant to have ten days to reply thereto.



At a stated term, to wit: The July Term, A. D. 1925 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday the 16th day of November, in the year of Our Lord one thousand nine hundred and twenty-five.

Present:

The Honorable Edward J. Henning, District Judge.

Hercules Gasoline Company, a corporation,	Plaintiff,	} No. 1735-B Law.
vs.		
Graver Corporation, Defendant.		

On the trial of this cause, the court found for the plaintiff but asked for briefs on the question of damages. The court finds that the plaintiff is entitled to its full claim on the first claim, to wit: \$15,000.00, the difference between the agreed sale price and what was received by selling the tank. As to the second claim, based upon repairs made necessary by breach of contract, in the amount of \$4,100.00, the court disallows this entirely and finds for the defendant on this claim. The general finding being for the plaintiff, the attorneys for the plaintiff are directed to prepare findings accordingly.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

HERCULES GASOLINE)	
COMPANY, a corporation,	(
)	
	Plaintiff,	(No. 1735-B Civil
		) FINDINGS OF
vs		(FACT AND
		) CONCLUSIONS
GRAVER CORPORATION,	(	OF LAW.
a corporation,)	
	(
Defendant.)	

This cause came on regularly for trial in the above entitled court on October 15, 1925, before the Hon.

Edward J. Henning, Judge of said court, sitting without a jury, a jury having been expressly waived by the parties. Plaintiff appeared by its attorneys, Marshall F. McComb, Esq., and John M. Hall, Esq., of the firm of McComb & Hall. Defendant appeared by its attorneys, Carroll Allen, Esq., and Wilbur Bassett, Esq. Evidence, both oral and documentary, having been introduced by plaintiff and defendant, and the evidence being closed, and both sides resting, and the cause having been submitted to the court for decision, and having been taken under advisement by the court; now, therefore, after consideration and deliberation, the court does make the following its findings of fact, and conclusions of law:

FINDINGS OF FACT.

The court makes the following findings of fact, to-wit:

I.

That it is true that plaintiff is, and at all times mentioned in the complaint herein was a corporation organized and existing under and by virtue of the laws of the State of California; that defendant is, and at all times mentioned in the complaint herein was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and doing business within the State of California;

II.

That it is true that on or about February 7, 1924, plaintiff and defendant entered into a certain agreement in writing wherein and whereby defendant

agreed by and with plaintiff that upon plaintiff's producing due evidence of its having acquired title to a certain steel tank, described as Graver Tank No. 2, defendant would ship promptly as directed, and not later than August 1, 1924, steel products to be ordered by plaintiff, of the aggregate price of \$36,000.00, at prices prevailing at date of shipment, which plaintiff agreed to accept and pay for at said price, and defendant agreed to accept in part payment and exchange for said steel products said Graver Tank No. 2, at the agreed price of \$27,000.00, and credit plaintiff said sum of \$27,000.00 upon the aggregate purchase price of said steel products, and defendant further agreed that said steel products would be erected by or at its direction in or near Los Angeles, at the prevailing price for this class of work;

III.

That it is true that on or about April 4, 1924, and prior to the furnishing of any of said steel products by defendant, and despite the fact that plaintiff had theretofore produced due evidence of its having acquired title to said Graver Tank No. 2, and was ready and willing to perform each and all of the terms and conditions of said agreement upon its part to be performed, defendant stated to plaintiff that it would not receive or accept said Graver Tank No. 2 in part payment or in exchange for said steel products, or allow plaintiff said credit of \$27,000.00 therefor in part payment of said steel products, and refused to furnish said steel products upon the terms stated in

said agreement, and repudiated and refused to abide by or perform said agreement;

IV.

That it is true that by reason of the foregoing, plaintiff has been damaged in the sum of \$15,000.00, of which amount the sum of \$15,000.00 are damages on account of the excess of the amount due from defendant on account of said Graver Tank No. 2 under said contract, over the price which plaintiff could have obtained therefor in the market nearest to the place at which it should have been accepted by the defendant, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for plaintiff to effect a re-sale, and of which amount the sum of \$0.00 are damages on account of expenses incurred by plaintiff in repairing certain stills, tanks and other equipment rendered necessary by the breach of defendant's obligations under said contract;

V.

That it is true that one S. Reid Holland executed the agreement heretofore referred to in Paragraph II of these findings on behalf of defendant, but it is not true that said S. Reid Holland executed said agreement without authority of defendant, or that said Holland at said date did not have authority or right to execute said agreement for or on behalf of defendant, or that defendant never at any time ratified or confirmed the same; that it is true that said agreement was on or about February 7, 1924, sent from Los Angeles to defendant at its office and principal place

of business at East Chicago, Indiana; that it is not true that defendant refused to ratify, accept or be bound by said agreement prior to on or about April 4, 1924, or that defendant notified plaintiff that it refused to ratify, accept or be bound by said agreement prior to on or about April 4, 1924.

From the foregoing findings of fact the court makes the following conclusions of law:

CONCLUSIONS OF LAW.

I.

That on or about February 7, 1924, plaintiff and defendant entered into an agreement containing the terms and conditions more particularly set forth in plaintiff's complaint herein, and in the above findings;

II.

That plaintiff at all times prior to defendant's repudiation of said agreement, on or about April 4, 1924, had performed each and all of the terms and conditions of said agreement upon its part to be performed; and was at the date of said repudiation ready and willing to thereafter perform each and all of the terms and conditions of said agreement upon its part to be performed;

III.

That said agreement was repudiated and breached by defendant on or about April 4, 1924.

IV.

That plaintiff is entitled to recover judgment against defendant in the sum of \$15,000.00, together with plaintiff's costs herein.

Judgment is hereby ordered to be entered accordingly.

Dated: November 21, 1925.

Edward J. Henning
JUDGE.

[Endorsed]: Original No. 1735-B In the District Court of the United States, Southern District of California, Southern Division. Hercules Gasoline Company, a corporation, Plaintiff. vs. Graver Corporation, a corporation, Defendant. Findings of Fact and Conclusions of Law Received copy of the within Findings this 13 day of Nov. 1925 Wilbur Bassett Carroll Allen Attorneys for Deft Filed Nov 21 1925. Chas. N. Williams, Clerk By Murray E. Wire Deputy Clerk. McComb & Hall Attorneys at Law 1014-15-16 Bank of Italy Bldg. Seventh & Olive Streets Los Angeles, Calif. Phone 821459 Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

HERCULES GASOLINE COM-)
PANY, a corporation, ()
Plaintiff, ()
vs () No. 1735-B Civil
() JUDGMENT
GRAVER CORPORATION, ()
a corporation, ()
Defendant.)

This cause came on regularly for trial in the above entitled court on October 15, 1925, before the Hon

Edward J. Henning, Judge of said court, sitting without a jury, a jury having been expressly waived by the parties. Plaintiff appeared by its attorneys, Marshall F. McComb, Esq., and John M. Hall, Esq., of the firm of McComb & Hall. Defendant appeared by its attorneys, Carroll Allen, Esq., and Wilbur Bassett, Esq. Evidence both oral and documentary, having been introduced by plaintiff and defendant, and the evidence being closed, and both sides resting, and the cause having been submitted to the court for decision, and having been taken under advisement by the court; and the court after consideration of the case having heretofore made its written findings of fact and conclusions of law;

NOW, THEREFORE, pursuant thereto, IT IS ORDERED, ADJUDGED AND DECREED: That plaintiff do have and recover of and from defendant the sum of \$15,000.00, together with plaintiff's costs and disbursements incurred herein, taxed in the sum of \$54.55.

Dated: November 21st, 1925.

Edward J. Henning
JUDGE

JUDGMENT ENTERED NOVEMBER 21ST,
1925 CHAS. N. WILLIAMS clerk, by Murray E.
Wire deputy clerk

[Endorsed]: Original No. 1735-B In the District Court of the United States, Southern District of California, Southern Division. Hercules Gasoline Company, a corporation, Plaintiff. vs. Graver Corpo-

ration, a corporation, Defendant. Judgment Received copy of the within Judgment this 13 day of Nov. 1925 Wilbur Bassett Carroll Allen Attorneys for deft Filed Nov 21 1925 Chas. N. Williams, Clerk. By Murray E Wire, Deputy Clerk McComb & Hall Attorneys at Law 1014-15-16 Bank of Italy Bldg. Seventh & Olive Streets Los Angeles, Calif. Phone 821459 Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

HERCULTES GASOLINE CO.,)
a corporation,)
)
)
Plaintiff,) MOTION FOR
vs.) NEW TRIAL
) AND NOTICE
)
GRAVER CORPORATION,)
)
Defendant.)

TO HERCULES GASOLINE COMPANY, Plaintiff and to MESSRS. MC COMB AND HALL, Its Attorneys:

Now comes defendant and moves the Court to vacate the judgment heretofore entered herein in favor of plaintiff and to grant a new trial of said cause for the following causes, materially affecting the substantial rights of the defendant herein, to-wit:

1. Irregularity of the proceedings of the court and of the plaintiff, and orders of the court and abuses of discretion by which defendant was prevented from having a fair trial.

2. Accident or surprise which ordinary prudence could not have guarded against.

3. Insufficiency of the evidence to justify the findings and decision of the court and that the said findings and decision are against law.

4. Error in law occurring at the trial and excepted to by defendant.

Said motion is based upon the files and orders herein and upon the minutes of the court.

You will please take notice that defendant will appear before Hon. Edward J. Henning, one of the Judges of said court in his court room in the Federal Building in the City of Los Angeles, California, on Monday, the 4th day of January, 1926, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, and then and there move the court to grant the motion hereinbefore set out and to vacate the said judgment and grant a new trial of said cause for the causes and upon the grounds hereinbefore set out.

Carroll Allen

Wilbur Bassett

Attorneys for Defendant.

[Endorsed]: Original. No. 1735-B. In the District Court of the United States In and for the Southern District of California, Southern Division Hercules Gasoline Co. plaintiff, vs. Graver Corpora-

tion, defendant. Motion for New Trial and Notice. Received copy of the within Motion & Notice this 28th day of Dec. 1925. McComb & Hall attorneys for plaintiff. Filed Dec 28 1925. Chas. N. Williams, Clerk. By Edmund L. Smith, Deputy Clerk. Wilbur Bassett, 432 Van Nuys Building Los Angeles Attorney for defendant

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

-----)
HERCULES GASOLINE CO.,)
a corporation,)
)
Plaintiff,)
) No. 1735-B Law.
vs.)
)
GRAVER CORPORATION,)
)
Defendant.)
-----)

ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that this case came on regularly to be heard the 15th day of October, 1925; Hon. Edward J. Henning, Judge presiding; Messrs. McComb & Hall appearing as attorneys for the plaintiff and Messrs. Carroll Allen and Wilbur Bassett appearing as attorneys for the defendant.

(Testimony of Arthur A. Butler.)

The following evidence was introduced by the plaintiff from the deposition of

ARTHUR A. BUTLER,

a witness called on behalf of said plaintiff:

“My name is Arthur A. Butler; I reside in Hammond, Indiana; I have been connected with Graver Corporation about 13 years as manager of tank sales, which position I held in 1923 and 1924. I at various times consulted with various officers of Graver Corporation.”

Plaintiff introduced Defendant's Exhibit 6 attached to the deposition (after same was identified), as follows:

EXHIBIT 6.

February 11th, 1924.

(Dictated February 9th)

Mr. S. Reid Holland,
819 Stock Exchange Bldg.,
Los Angeles, California.
A. A. Butler

In explanation of the various wires that have been sent you, I beg to give you the following explanation:

Before proceeding I wish to advise that this matter has been analyzed in detail to Mr. P. S. Graver personally, who stated that he advised you that any arrangement he made with you personally while on his trip to your city was subject to detailed arrangements that would be made with you by the Sales Depart-

(Testimony of Arthur A. Butler.)

ment at this end. It was my intention sometime ago to write up a contract under which you were to operate, but did not feel, in view of the short space of time that we were known to each other, that we should enter into any arrangement until we were better known to each other, which is one that I have been following out in all of my sales plans.

Regarding the Getty proposition; as explained in Mr. Phillips' wire of late January, we had at no time based our figures on any other plans, but that \$580.00 per tank was the commission and that \$750.00 per tank was your split on the erection. In view of that fact, therefore, as advised in that wire, your account had been credited with the amount of \$580.00 on the first tank, plus the full split on the erection, but in view of the fact that only \$18,000.00 had been received on the second tank only one-half of the commission should have been credited to your account. As mentioned in Mr. Phillips' wire a sum in excess of this had already been credited and we, therefore, did not see the justice in your request asking for additional commissions.

As stated in Mr. P. S. Graver's wire of several days ago and in my Night letter of yesterday, further commissions will, therefore, not be paid on the Getty account until the check for \$9000.00, which you advised under date of January 30th, would be sent us last week and which in a more recent wire you stated would be sent us this week, is received. Upon receipt of this check the balance of the commission due

(Testimony of Arthur A. Butler.)

you will be sent and upon receipt of a release from Getty on our contract and a release from Abbott on the erection we will be willing to forward you our check for the amount due you on the erection.

Regarding that portion of your wire communication which spoke of our sending you balance due Abbott on the first Getty tank; wish to advise that it is our policy to make payments until releases are in our hands. We must either have Getty's acceptance of the first tank, or his release of us from the balance of the erection of test before this amount can be paid.

Your last wire requests that we honor your draft for 60% of the draft that we had recently made on the Western Refinery proposition. As previously advised, paying commissions by drafts is not an acceptable procedure and must be discontinued. I, therefore, advised you that when we received notification from our bank that the moneys covering our draft is in their hands check covering the commissions due will be sent you.

I don't want you to feel for a minute that I am taking an arbitrary stand in this matter. All of our agents are handled in a like manner, and in view of the fact that we have been been universally successful in our arrangements with them I can see no reason whatsoever why the same sort of an agreement should not be acceptable and work satisfactorily in your case.

Yours very truly,

Manager Tank Sales.

(Testimony of Arthur A. Butler.)

MR. McCOMB: We are offering that letter for that statement, to show that there was an agency.

MR. BASSETT: To which we object on the ground it is equivocal and remote; that it doesn't tend to show that this man has been treated, will be treated, or ever has been treated, as an agent, or, if he was, whether it was a general agency, a special agency, a mere authority to send in offers, or what it is. This court certainly will not gamble upon an equivocal statement of that sort, which is merely a part of a letter, which says, "We have treated our agents in a certain way".

THE COURT: The objection is overruled, and it will be received for what it is worth. Of course it is not proof of agency, but it tends in that direction.

To which ruling defendant duly excepted.

(EXCEPTION NO. 1.)

Plaintiff here offered Defendant's Exhibit to Depositions No. 55 attached to the deposition, as follows:

EXHIBIT 55.

March 24th, 1924.

Mr. S. Reid Holland,

Los Angeles, Calif.

A. A. Butler

With reference to that portion of your wire communication of 21st instant, and also various communications and contracts received regarding the second Getty tank, and also the Hercules supposed contract;

(Testimony of Arthur A. Butler.)

we informed you sometime ago by telegraph that we are not interested in a trade and regret, therefore, to advise that the approval of the contracts is not in order. We will be willing to accept the Hercules order only on our regular term basis, involving in no way, however, the Getty Tank.

The entire matter will, therefore, be held in abeyance awaiting your and their acceptance of the matter as outlined in this communication. Under date of March 19th we received a wire communication from the Hercules Gasoline Company to the effect that you had wired them that it is more practical to erect the 12' x 30" Stills on location instead of erecting in shop, satisfactory erect here, change order accordingly. Wire if plans, specifications and order received. Give us some advice of shipping date. This communication was not replied to, because we felt that the entire transaction was being handled by yourself and I, therefore, wish that you would kindly communicate with them at once, advising them of our decision and communicating their reply.

Yours very truly,

Manager Tank Sales

AAB:MM

Plaintiff here offered Defendant's Exhibits attached to Depositions Nos. 73, 77 and 152, as follows:

(Testimony of Arthur A. Butler.)

EXHIBIT 73.

GRAVER CORPORATION

East Chicago, Indiana

10:28 A. M.

day letter

April 4th, 1924.

Confirmation of Telegram

To Hercules Gasoline Co.,

Los Angeles, Calif.

Answering yesterdays night letter we are not proceeding with any fabrications your account stop advised Holland some days ago that we were not interested in any proposition involving trade Getty tank our W. F. Graver expected to be in Los Angeles next week and will see you.

GRAVER CORPORATION

A. A. Butler

EXHIBIT 77.

Graver Corporation

East Chicago, Indiana

April 19th, 1924

Confirmation of Telegram 11:40 Straight Wire

To Hercules Gasoline Co.

30th & Santa Fe Ave.,

Los Angeles, California.

Answering wire seventeenth quoting your wire to our W. F. Graver stop cannot rescind action our wire April fourth decling proposition Holland made you.

Graver Corporation,
Butler.

(Testimony of Arthur A. Butler.)

EXHIBIT 152.

December 11th, 1923.

S. Reid Holland,

#820 Stock Exchange Bldg.,

Los Angeles, California.

R. T. Phillips

In accordance with Mr. Butler's advice to you we are sending you herewith a revised contract covering the tankage for the Western Refining Company at Wilmington from which we wish that you would have the required number of copies made up and properly signed by the Western Refining Company and the Southwestern Engineering Company. In other words, we wish the Western Refining Company to guarantee the account inasmuch as the credit rating of the Southwestern Engineering Company only runs about \$25,000 to \$35,000.00. This contract will also serve as a sort of form from which you may make up future contracts of a like nature.

Inasmuch as this contract is made with the contract price payable in accordance with terms shown in our General Conditions, the clause regarding title is not included. Where any other terms except the standard ones are used, or in other words, if any deferred payments are to be made the title clause must be inserted in the contract, which makes it in effect a conditional sales agreement. We are enclosing herewith the clauses which are necessary to insert in an agreement of this kind.

(Testimony of Arthur A. Butler.)

We are also sending you a supply *a* stationery which we use for this class of work and wish that you would have contracts made up on these forms, using the binders enclosed.

We would also call your attention to the fact that where specifications are referred to they should accompany the contract which are sent in for signature in all cases, as should also the Standard General Conditions.

We trust that these instructions will be clear to you, but should there be any further questions which may come up regarding contracts, or in fact any other phase of our procedure in quoting, we wish that you would kindly get in touch with us and we will be glad to go over the matter with you.

In this particular case we should be glad to have you go back to the Western Refining Company and the Southwestern Engineering Company and obtain their signature as quickly as possible so that we may sign the contracts and have a copy in our files.

Very truly yours,

Plaintiff thereupon read from the deposition of Arthur A. Butler as follows:

“The Department of Sales comes under the jurisdiction of Mr. Bartlett; Mr. R. T. Phillips is an employee of Graver Corporation. He is assistant manager of tank sales; he is directly under me; he wrote some of this correspondence shown me as Defendant’s Exhibits 3 to 152, inclusive; this was under the general direction of myself.

(Testimony of Arthur A. Butler.)

Defendant's Exhibits Nos. 100 to 103 attached to the deposition were sent by me on behalf of Graver Corporation; they are copies of certain telegrams; were sent in the usual course of business."

Plaintiff here introduced Defendant's Exhibits 100 to 103, inclusive, attached to the deposition, as follows:

EXHIBIT 100.

GRAVER CORPORATION

East Chicago, Ind.

August 23, 1923.

Confirmation of Telegram
To Thompson-Holland Co.,
820 Stock Exchange Bldg.,
Los Angeles, Calif.

Gettys wired advising he had requested you to cancel his order stop have just wired you three car numbers stop if cancellation is to stand it will be necessary to charge Gettys with such expense as we have been put to stop this matter in your hands for decision please advise. Confirming.

GRAVER CORPORATION

EXHIBIT 101.

Graver Corporataion
East Chicago, Indiana.

Confirmation of Telegram. Aug. 23rd, 1923
To Thompson-Holland Co.,
820 Stock Exchange Bldg.,
Los Angeles, Calif.

Loading the following P. R. R. cars for Gettys three one six one *mine* two and seven five one six seven eight and three one six nine two four. Confirming.

Graver Corporation.

(Testimony of Arthur A. Butler.)

EXHIBIT 102.

Graver Corporation
East Chicago, Indiana

August 24th, 1923.

Confirmation of Telegram
To Thompson Holland Co.,
820 Stock Exchange Bldg.,
Los Angeles, California.

Our damage five thousand yours to be added in view of possibility of securing additional business from Getty we are not inclined to take advantage of this situation and would recommend leniency on your part also.

Graver Corporation.

EXHIBIT 103.

Graver Corporation
East Chicago, Indiana

Confirmation of Telegram August 25th, 1923.
To Geo. F. Getty,
536 Union Oil Bldg.,
Los Angeles, California.

Wired Thompson Holland night letter advising extent of damage if your order is cancelled please handle settlement thru them.

Graver Corporation

THE COURT: It (Exhibit 103) will be received in the same way, subject to being connected with the transaction.

(Testimony of W. F. Graver.)

MR. BASSETT: To which we object on the ground that George F. Getty to whom this wire was sent is not a party to this action nor is there any element in the issues in this case concerned with George F. Getty, and that it is incompetent, irrelevant and immaterial. Here is a wire to another person outside of this case.

THE COURT: It will be received subject to being connected with the transaction.

To which ruling defendant duly excepted.

(EXCEPTION NO. 2.)

Plaintiff thereupon read from the deposition of

W. F. GRAVER:

“My name is W. F. Graver; I reside in Chicago; I have been about thirty-two years with Graver Corporation; I am the Vice President and Treasurer and have been for about twenty *year*; James B. Graver is President; Philip S. Graver First Vice President; H. S. Graver Secretary; A. E. Lucius Assistant Secretary. I saw some of the Hercules people a few days after my conversation with Mr. Holland’s office; I saw Mr. Bird and Mr. Mattei; this was at the Biltmore Hotel; Mr. Holland was present. Referring to Defendant’s Exhibit No. 79 attached to the deposition, this was placed on my desk for approval about August 8th, 1923, and I approved it on that date.”

Plaintiff here offered in evidence Defendant’s Exhibit to depositions No. 79, as follows:

(Testimony of W. F. Graver.)

EXHIBIT 79

Office Order

7/27/23

S. Reid Holland
820 Stock Exchange—Los Angeles, Calif.
Representing—
Graver Corp.
East Chicago, Ind.

Deliver to George F. Getty,

Destination to be given) Freight paid to destina-
later Via Santa Fe.) tion by you, we to pay
) hauling charge from rail-
) road to base.

2 80,000 Bbl—All Steel
Tanks—Gas tight 36,000.00 each

18,000.00 to be paid on
completion of tanks and
satisfactory tests have
been made

Erected on our property
complete for 36,000.00
each me to make grade
and painting to be extra
and me to furnish wa-
ter for listing

Bal of 18,000.00 when oil
is sold time not to exceed
1 year

(Testimony of W. F. Graver.)

Tanks to be shipped from Chicago in from 7 to 10 days from receipt of order at *Each* Chicago. Interest at 7%

(signed) George F. Getty
by H. B. Gordon
Order No. 1323.

To which offer defendant objected upon the ground that it was irrelevant and merely an order, which objection was overruled.

THE COURT: It will be received, subject to being connected up.

(EXCEPTION NO. 3)

MR. BASSETT: May I at this time, in order to shorten the trial, ask that we be allowed exceptions according to the State practice, without specifically putting them into the record?

THE COURT: Yes.

“When I was in California I talked with Abbott and House in Holland’s office, I don’t remember if I discussed the Hercules or Getty contracts, they were paid for erecting the first Getty tank, we paid them direct.”

Plaintiff here offered in evidence Defendant’s Exhibit “A” (which was duly identified) attached to the deposition as follows:

EXHIBIT "A"

Geo. F. Getty
 #536 Union Oil Bldg.,
 Los Angeles, Calif.

1923

	Sep. 21	30	31	32841	31497	547	547	20.25	Sep. Debits				Credits								1923
									May	72000.00			9000.00	Sep. 1							Sep. 1
									May	20.25			9000.00	"							"
									May				9000.00	"							"
									Sept.	129			9000.00	"							"
									May	548	Vo	9631	9788.65	May	548	Vo	9631				Sep. 30
Oct	31	Vo	10699		567	May		5.85	May	567	Vo	10699	1697.45	May	567	Vo	10699				Oct. 31
													24540.00								Dec. 31
1924													<u>72026.10</u>								1924

1924

Jan.		Balance											6000.00	May	154	CB					Jan. 10
													513.90	May	155	"					"
													9000.00	May	162	CB					Feb 22
													9000.00	May	667	Vo	5096				May 31
													26.10	May	669	Vo	5174				"

Hercules Gasoline Co.

45

(Testimony of W. F. Graver.)

To which offer defendant objected on the ground that it was incompetent and irrelevant.

The objection was overruled, to which ruling the defendant duly excepted.

(EXCEPTION NO. 4.)

“Referring to Voucher No. 5096, this \$9000 (the second item from the last) represents a credit for the second tank which was not erected. The \$9000 under date of February 22, 1924, (being the third from the last item on the right hand side of Exhibit “A”) was a check sent us by Getty Company in full payment for the contract. At that time there was \$9000 due from Getty, that is, after allowing \$9000 for the tank not erected. I have no information as to whether this tank is still on the Graver property except that Mr. Bird stated that he had title to the tank.

Mr. P. S. Graver on behalf of Graver Corporation approved the adjustment of the contract with Graver by which a credit of \$9000 was placed with the Getty account.

Referring to the conversation at the Biltmore, our people wired the Hercules that they would not accept the Getty tank which I understood Hercules would require. There is a copy of a telegram, Defendant’s Exhibit “A-100” attached to the deposition which was sent. This telegram has been read.”

Defendant’s Exhibit A-103 attached to the deposition was here introduced by the plaintiff.

(Testimony of Philip S. Graver.)

“This telegram was sent by Mr. A. A. Butler, our sales manager. To a certain extent he had authority to send it, it was customary for him to send telegrams in the course of his duties.

I don't know whether there was any investigation of the Hercules credit standing, there might have been, probably Holland would have followed the procedure of most of our salesmen to get the information so that the credit could be looked up.”

Plaintiff offered testimony under Section 2055 C. C. P. from the deposition of

PHILIP S. GRAVER,

as follows:

My name is Philip S. Graver; I reside in Chicago; I am first Vice President and Chairman of the Board of Directors of Graver Corporation, have been since 1895, am in charge of operation, sales, manufacturing, practically everything pertaining to the business during 1923-24. Mr. Bartlett was the general manager; it was not necessary for him to consult me about everything. There are certain policies that are formulated by the officers and directors that gave him authority to act, but on any special occasion matters were referred to me and consulted about, that is, matters of importance. K. W. Bartlett was head of the sales department in 1923-1924. A Mr. A. A. Butler was manager of tank sales.

Subsequent to meeting George F. or Paul Getty in the Palace Hotel in San Francisco, I met him in Los

(Testimony of Philip S. Graver.)

Angeles in his office. We were trying to get together on a contract so we could get the balance of our money if they did not want to take the second tank or go ahead with its erection. We offered to make them certain allowances on the erection portion. I agreed to allow them \$9000 if the tank was not erected.

On February 7, 1924, there was due from Getty \$18,000 under the contract (Defendant's Exhibit 79 in the deposition). This was provided that we erected the second tank or \$9000 if we made the allowance on the tank for erecting it themselves. Subsequent to February 7th, 1924, there was paid \$9000 on that. This came in a check accompanied by a draft for S. R. Holland for a commission he said was due him. This \$9000 was payable to the balance on tank No. 2. We refused to honor the draft and instructed the bank to send the check and draft back. Afterwards the bank called us up and stated they had the check and had been instructed to put it through. We did take it and credited the Getty account with the \$9000. Also gave a credit of \$9000 to Getty on the erection of Tank No. 2.

The following are Defendant's Exhibits to the deposition written by me: 10, 54, 65, 66, 67, 82, 83, 132, 133, 136 and 143. These are copies of letters that were written by me to Hercules or Getty originals being mailed, the telegrams sent in the usual way."

Plaintiff here introduced Defendant's Exhibit No. 10 attached to the deposition, as follows:

(Testimony of Philip S. Graver.)

EXHIBIT NO. 10.

February 21, 1924.

Mr. S. Reid Holland,
820 Stock Exchange Building
Los Angeles, California.

Dear Sir:

A nine thousand dollar check from George F. Getty, accompanied by your draft for eight hundred and eighty-six dollars and thirty cents, the balance commission due you on this account, received by our bank today.

We are not very well pleased with the way you have handled this item. Evidently you do not realize the various conditions attached to this contract. In the first place the two tanks were sold to Getty based on half cash, balance within one year's time, and on my visit out there an amended contract was drawn up by myself, which Getty was to sign, and this provided the detail very clearly so that there would be no controversy over the contract when the provisions were lived up to.

After the first tank was finished and Getty did not desire to go ahead with the second tank, this left Abbott having a claim against our company for an adjustment on the erected price of the two tanks. It also left Getty with a claim on us in case of the first tank leaking to make it good. This is the reason we do not want to pay Abbott the entire amount for the first tank, as he has spent no money for testing the

(Testimony of Philip S. Graver.)

tank, and he should not receive the balance until the tank was tested and accepted or Getty released us from all claims and paid us the balance due us. You made a number of promises, that Getty would mail the amended contract to us, and later a check would be mailed to us, not having received either, we were in no position to pay you the balance of your commission or to make any final advances to Abbott.

We wired you very clearly that on Getty's payment for the balance and a release from he and Abbott, we would send you your commission. We would not accept any drafts from you on this account. It seems that you were premature in drawing on us for this commission, this based purely on Getty's promise that he was going to give us a check.

Getty's check received today states on same "Account tanks in full.." While this does not clearly define that he has no claim upon us we believe we can accept it as closing his side of the contract. There remains now only Abbott to be settled with, and if Abbott will sign the release which Butler sent you, we will either mail him a check or let him draw on us for the balance.

Our stand in this matter may have looked arbitrary to you, but where a company like Getty, that has made so many promises, we have got to see the money before we are willing to pay out other money on account.

You had no right to tie our check from Getty up with your draft, as this check was the property of

(Testimony of Philip S. Graver.)

the Graver Corporation, and any time you feel that you can not depend on what we tell you we agree to do, that is the time to quit doing business with our company. For your guidance in the future we will pay no commissions by sight draft. Whatever percentage of the total contract the customer pays on account, this will be your percentage against your total commission. Also all customers' accounts are to be paid direct to us by the customer. This is our regular rule that is followed by all of our men. We have had entirely too much controversy over these matters, and we have got to get down to a business basis regarding these things.

Yours very truly,

Graver Corporation

Vice President.

The introduction of this was duly objected to upon the ground that it was incompetent, irrelevant and immaterial, and the objection overruled, to which defendant excepted.

(DEFENDANT'S EXCEPTION NO. 5)

Plaintiff here introduced Defendant's Exhibit No. 67 attached to the deposition, as follows:

(Testimony of Philip S. Graver.)

EXHIBIT NO. 67.

April 2, 1924.

Mr. S. Reed Holland,
Stock Exchange Building,
Los Angeles, California.

Subject: Hercules Petroleum Company

Dear Reed:

We are still at sea regarding the standing of this contract, and do not know what your final plans in this connection are. In looking over the correspondence, you evidently made this contract with Hercules early in February, but the first we knew of it was sometime later, and did not know that you had made a trade on the Getty second tank until we received a wire from Hercules advising us of this fact. If such a deal was contemplated you should have secured our permission to make this deal, especially as we are the parties that are going to carry it through, unless you could have disposed of the tank for them; then it would simmer down to a cash proposition. We do not care to have any more material tied up in California than what we already have, and to carry this tank along, not knowing whether it could be sold, did not meet with our approval. So far, we have done nothing on the Hercules contract, and can do nothing until this tank matter is settled.

We do not know much about the Hercules Company credit, but W. F. is to look this up while he is in California.

(Testimony of Philip S. Graver.)

It looks as if you will have to play a fine Italian hand with the Hercules Company to keep from getting us in bad, and I want you to keep us posted regarding the situation.

Yours very truly,

GRAVER CORPORATION

PSG:AJ

Vice President.

"In the Exhibits Defendant's Exhibits 3 to 152 attached to depositions are various letters and telegrams received by Graver Corporation from Holland, from Hercules Company and Getty that were received in due course of mail. Others in the Graver Corporation carried on some correspondence regarding these matters. I was consulted as to practically all these matters by either Phillips or Butler. I may not have instructed them just exactly to send the telegram, but the general policy necessary was outlined, and they were authorized to send these various wires or letters."

Plaintiff here offered Defendant's Exhibit 11 attached to the depositions as follows:

EXHIBIT NO. 11

Western Union Telegram

Los Angeles Calif. Feb. 22, 1924.

Graver Corp.

East Chicago, Ind.

Demurrage at Wilmington goes to five dollars per car Monday stop understand from Florian that additional contracts have been forwarded why not come to California and thaw out Phil stop Gilmore tanks

(Testimony of Philip S. Graver.)

very unsatisfactory Kinghorne has recaulked every seam one tank and third test now being made on other one which has had bottom this kind of work is poor support for sales likewise delay on quotations Rush Hercules estimate stop was elected director yesterday mercury refinery which enables me to better protect our White Star interests.

S. Reid Holland

To which offer of Exhibit No. 11 defendant objected on the ground that the same was incompetent and immaterial.

The court admitted this evidence subject to being connected up; to which ruling defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 6).

Plaintiff thereupon offered Exhibit No. 38 to the Depositions of Defendant, as follows:

EXHIBIT NO. 38.

GRAVER CORPORATION

To Graver Corp.,	March 14th, 1924.
Attention P. S. Graver, Vice-Pres.	
Address East Chicago, Ind.	File No. #102
From S. Reid Holland	Geo. F. Getty Co.
Dear Sir:	

Without reviewing too much detail, the contract which you revised and left with Mr. Paul J. Getty was followed up consistently and often by yours truly and I made some fifty-seven trips and then some to

(Testimony of Philip S. Graver.)

the Getty Office in an effort to have this matter closed but the general circumstances surrounding affairs and principally Mr. Getty's illness and the fact that the organization became internally disorganized resulted in a general buck passing contest. The situation has somewhat cleared itself and as I stated in a recent letter the Getty affairs are being incorporated as the George F. Getty Company with the senior as president and the son, Paul Getty, vice president and general manager. Various resignations have taken place and Paul Getty has hopes of making a good organization out of what is left. He was criticised pretty generally for buying the 80s altho as a matter of fact he voluntarily admits if he had bought the 10 when we first talked of them and filled them with cheap oil, that was then available, they would have paid for themselves long ago and he would have been way ahead, however, that opportunity is passed.

Tank #2 stands an empty monument and they have nether oil nor water to even test it and there was little likelihood of their having any need for Tank #2 as their drilling campaign in Torrance constituting some ten or twelve wells has not panned out as yet and there was every possibility of their standing us *oof* indefinitely, that is, unless we wanted to force settlement on Tank #2.

The Hercules Gasoline Company which is quite an active and growing concern needed production and a proposition was worked out early in February whereby Getty was to furnish them crude along certain favor-

(Testimony of Philip S. Graver.)

able lines for a period of five years and in consideration for the favorable price, Hercules agreed and did purchase tank #2 and at this writing it is their property. I agreed with Getty as per the enclosed contract that I would help him clear the decks and get out without loss which he naturally appreciates, and you will note that there is no mention of any subsequent test on tank #1, In fact the question did not come up, but I am still holding Abbotts check which was sent to me awaiting a letter which he is preparing guaranteeing to make good any leaks that we may be called upon to take care of. This is only a precaution on my part to take care of future contingencies. I have been obliged to hold out on you apparently on this transaction principally for the reason that Bird of a Hercules Company has changed his specifications several times and at the outset he did not want the equivalent in tonnage until sometime in July. You will note from the details which I am enclosing you in another letter on the Hercules transaction that there is ample margin for me to protect you against loss in disposing of Tank #2. I had in mind utilizing it on the Western job which I will write about in another letter, and had the diameters change on the 55's for that particular reason.

If this Hercules transaction meets with your approval, I will work out a disposition of tank #2 that will be satisfactory.

At this writing the Western contract has been partially disposed of. Two of the 55's were let yester-

(Testimony of Philip S. Graver.)

day to the Western Pipe and Steel Co., and the other four will be refigured as I will explain in another letter.

In addition to this possibility of turning tank #2 promptly, and in connection with my letter of this date relative to White Star, if agreeable to you I would like to utilize Getty Tank #2 as a complete tank for #3 on the White Star job providing, however, that they will take care of the payments on Tank #2 as indicated in my letter of this date and be in a position to take care of the obligations on Tank #3, which would obviate the necessity of shipping any more steel from Chicago right away but would give them the tank #3 within the next sixty days. In either event, Getty will handle the transportation of tank #2. Please bear in mind that in endeavoring to work out this solution I had in mind the final settlement for you on the Getty account and I feel that the transaction with the Hercules Company will be a good one for us as they are going to need considerably more equipment and storage. At this writing I am waiting your final figures and will probably write you during the day giving you all the facts relative to the Hercules matter.

I trust I have made myself clear and that this meets with your approval.

Yours very truly,

(Signed) S. Reid Holland

To the introduction of which defendant objected upon the ground that the same was incompetent, ir-

(Testimony of Philip S. Graver.)

relevant and immaterial. The objection was overruled. Defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 7)

"Holland had specifications and inter-office correspondence and contract forms. Exhibit A-1, A-B-2 and 2-A annexed to the deposition are on forms supplied by our sales department. Holland never discussed with me the question of placing the name of Graver Corporation on his stationery; it is a general custom, however, among our engineering agents to put our name on their letterheads to cover items that they sell."

Plaintiff here offered Defendant's Exhibits 16, 37, 38, 39, 138, 139, 142 and 144, as to that portion of those exhibits which contained on the stationery of S. Reid Holland the following: "Graver Corporation, inter office correspondence, Date, File No. To, Address, From." To which evidence the defendant objected on the ground the same is incompetent, irrelevant and immaterial. The objection was overruled and the evidence admitted subject to being connected; to which ruling defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 8.)

The correspondence and telegrams with respect to Getty and Hercules transactions were carried on through Holland principally; this was because he was on the ground at Los Angeles and made the preliminary transaction with the companies, and we figured he was the man to be advised regarding detail.

(Testimony of Philip S. Graver.)

Mr. Butler sent Defendant's Exhibit No. 103 to deposition. I think I authorized this.

The work of erecting Getty tank No. 1 was not done by Graver but by Abbott & House. I don't believe we had any correspondence with Abbott & House. Mr. Holland handled that, as he took the contract for the erection. That is, the Graver Corporation sold the material knocked down and he was to take care of the erecting. I know J. Parker Thompson, I believe he was in partnership with Holland handling pipe and other supplies and Holland was handling tanks. This in September and October, 1923. While I was in California in 1923 I had a general talk with Thompson and Holland; Holland was to handle all the tank work and any inquiry regarding tanks would be taken up by Holland. Afterwards Holland told me he was going to dissolve with Thompson.

I first met Holland in Los Angeles in 1923; before that he had asked for inquiries and we had quoted him prices and he had made some sales, in particular the Getty contract of August, 1923. This calls for the purchase of tanks No. 1 and 2; we supplied Holland with various blanks on which appeared the name of Graver Corporation and I presume the sales department gave him from time to time literature and other forms to be used. The general inference to anyone seeing these things would be that in some ways he represented the Graver Corporation. Referring to Exhibit 79 and the statement written at the top of the order, 'S. Reid Holland, representing Graver Cor-

(Testimony of C. R. Bird.)

poration,' I can't tell you whether any exception was taken to that statement. If there is anything in the correspondence in this regard, it will speak for itself.

Referring to Defendant's Exhibit 73 attached to deposition, telegram dated April 4th, 1924, from Graver Corporation to Hercules, I think this is the first communication by Graver to Hercules declining to be bound by the contracts of February 7, 1924. All correspondence regarding this contract prior to telegram of April 4 just referred to was directed on behalf of Graver Corporation to S. Reid Holland.

C. R. BIRD,

a witness on behalf of the plaintiff, testified as follows:

"My name is C. R. Bird; I am superintendent Hercules Gasoline Company, have been for four years, and was during the month of February, 1924. The contract between George F. Getty and Graver Corporation dated February 7, 1924, was first seen by me in Getty's office. I saw it signed by S. Reid Holland. I think there were two carbon copies of it which were signed. (This was here offered for identification as Plaintiff's Exhibit No. 1.) Referring to contract between Hercules Gasoline Company and Graver Corporation dated February 7, 1924, I first saw that in Mr. Getty's office at the same time the other document was signed; I saw S. Reid Holland sign it and I signed it myself; there were two carbon copies, all of which were signed. I never saw the contract between

(Testimony of C. R. Bird.)

George F. Getty and the Graver Corporation dated February 7, 1924.

Plaintiff here offered contract Plaintiff's Exhibit 2 for identification.

Paul Grimm, Andrew Mattei, Jr., S. Reid Holland and myself were present when these contracts were signed, on February 7, 1924, at the office of George F. Getty.

Q Did you have any conversation with Mr. Holland regarding his authority to represent the Graver Corporation?

This was objected to on the ground it is incompetent, irrelevant and immaterial. The objection was overruled. Defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 9.)

This conversation extended over two hours; the gist of it was that Hercules Gasoline Company was going to buy a tank from Getty and Graver Corporation would take the tank off our hands at the same price we paid Getty, provided we would give them an order for a specific amount of steel. In the course of this conversation Mr. Mattei brought up the question as to whether Holland had authority to act for Graver, and he produced a letter written on a Graver letterhead signed Graver Corporation by W. F. Graver. This letter was a long one and I did not see all of it. The gist of the part that I saw was that Holland had full authority to transact any business in Los Angeles on behalf of Graver Corporation, particularly the settle-

(Testimony of C. R. Bird.)

ment of the tank deal with Getty. He further said if we were not satisfied we could go over to the bank and an official there would show us certain documents. We did go over to the bank but the official happened to be out. We were both satisfied by this letter and by files that Getty had in his office that I had seen, that Holland had ample authority. This letter I referred to was signed Graver Corporation, by W. F. Graver, and was exhibited at the same time these contracts were signed.

Whereupon Plaintiff's Exhibits 1 and 2 for identification were introduced in evidence as Plaintiff's Exhibits 1 and 2, as follows:

EXHIBIT NO. 1.

GRAVER CORPORATION

Los Angeles, Calif.,

February 7, 1924.

HERCULES GASOLINE CO.,

2411 East 30th St., Los Angeles, Calif.

Gentlemen:

In behalf of the Graver Corporation of East Chicago, Ind., whom I represent on the Pacific Coast, I will agree that upon due evidence of your having acquired title to fabricated steel, described as Graver Tank number two, now said to be on hand complete on Geo. F. Getty property at Santa Fe Springs, Calif., I will contract to have shipped promptly as directed and not later than August first, 1924, the equivalent in tonnage at prevailing prices, date of

(Testimony of C. R. Bird.)

shipment and erection of said Graver Tank number two, Viz., \$36000.00 and for which I will agree to accept in exchange and have credit issued by the Graver Corporation in the amount of \$27000.00, and further provided that the said tonnage will be erected by or at the direction of the Graver Corporation in or near Los Angeles, subject to their general field conditions herewith attached and at prevailing price for this class of work and for which payment will be made promptly in accord with said General Field conditions.

Yours truly,

Graver Corporation,

By S. Reid Holland

~~Approved:~~

~~Graver Corporation~~

~~East Chicago, Ind.~~

~~By~~

Accepted

HERCULES GASOLINE CO.,

By C. R. Bird

EXHIBIT NO. 2

GRAVER CORPORATION

LOS ANGELES, CALIF. February 7, 1924

Geo F. Getty,

Bartlett Bldg.,

Los Angeles, Calif.,

Dear Sir:

In behalf of the Graver Corporation of East Chicago, Ind., whom I represent as your files will dis-

(Testimony of C. R. Bird.)

close, I will agree that upon receipt of your check for \$9000.00, being the balance due the Graver Corporation on Tank number two, now said to be on hand at your *hard* at Santa Fe Springs, Calif., Complete, and a further consideration embodied in revised contract made between J. Paul Getty for the above, and P. S. Graver for the Graver Corporation, stipulating that the said steel and tank equipment including erection tools etc., shall be moved from Santa Fe Springs to another location in the Los Angeles Basin, promptly as requested, and at the expense of Geo. F. Getty, that when these provisions are complied with, that I will on the part of the Graver Corporation, agree to the execution of a contract between the Graver Corporation and the Hercules Gasoline Company to supplement an equivalent in tonnage viz., \$27000.00 in fabricated steel to be shipped on or before August first, 1924. and at the prevailing price of such steel and that such agreement shall provide for the erection of the said steel at prevailing price for such erection, but in no case to be less than \$9000.00, it being the sense of this agreement that this exchange is to supplement the full contract price for the erection of tank number two, at Santa Fe Springs, Calif., Viz., \$36000.00.

This agreement when executed and signed by parties hereto shall constitute a release on the part of

(Testimony of C. R. Bird.)

Geo. F. Getty from further execution of order and contract of August 1923.

Yours very truly,

Graver Corporation,

By Reid S. Holland

Geo. F. Getty

By Geo. F. Getty

Graver Corporation,

East Chicago, Ind.,

Attest Mabel McCreery

Secretary

By

Referring to agreement between Getty and Graver Corporation dated February 7, 1924, one of the contracts, Plaintiff's Exhibit "A", is not altogether like the other. (One of these forms was marked Plaintiff's Exhibit 3 for identification.) That is George F. Getty's signature, on Plaintiff's Exhibit 4.

Referring to Plaintiff's Exhibit 4 which was here introduced in evidence, as follows:

I had a conversation with W. F. Graver in Los Angeles in the presence of Holland and A. Mattei, Jr., this at the Biltmore Hotel about April 10, 1924; the gist of this was that I wanted to find out why the tanks and fabricated steel we had ordered had not been shipped. Graver said if we would sit still in the boat he was sure everything would come out all right and the tanks would be shipped within a very short time. He said naturally they wanted to dispose of the 80,000 barrel tank they had there, they had a deal on with the Western Refining Company and thought this Company would be on the dotted line the next day, and said if we would just hold our horses

(Testimony of S. Reid Holland.)

we would get all our stuff and everything would come out as arranged with Mr. Holland. He referred to Mr. Holland as "our Mr. Holland", and Holland spoke up several times and said we were in a little bit of a hurry, but everything would come out all right, and we went away thinking everything would be all right. We afterwards sold this 80,000 bbl. tank to Western Pipe & Steel Company for \$12,000. I tried to sell this to five or six different firms in Los Angeles, but I couldn't get any other orders, no one wanted the tank.

Due to the fact that this contract between Graver and Hercules was not completed, Hercules was put to some additional expense. This was on account of labor on stills, due to the fact that Graver did not ship promptly; this amounted to about \$2,300. and our payroll and materials figured up \$750., total was \$4,200.

Testimony of

S. REID HOLLAND,

who was served with a subpoena duces tecum and who stated that he did not have the letter referred to in his possession, and that none of the other letters referred to in said subpoena were in his possession or produced.

I am the Holland referred to in these agreements. I do not have the letter that Mr. Bird refers to; I never did have; I have looked every place where I ordinarily place letters. Do not recall ever seeing any letter of that description.

(Testimony of C. R. Bird.)

Whereupon defendant renewed its objections to any evidence regarding said letter, and moved to strike evidence concerning the same out. This objection was overruled and motion denied. Defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 10.)

C. R. BIRD (resuming).

CROSS-EXAMINATION.

S. Reid Holland was in Getty's office when this deal was made and saw the initial payment made by us on the tank and he saw the bill of sale which was handed to us.

EXHIBIT NO. 4

Graver Corporation

East Chicago, Indiana

9.00 P. M.

Night Letter

Confirmation of telegram

Feb, 8th, 1924.

To S. Reid Holland

819 Stock Exchange Bldg.,

Los Angeles, Calif.

Hercules refining Co. prices four crude stills ten by thirty feet our standard ninety two hundred thirty dollars shop erected except dome looses ship first still three weeks second two weeks later balance one per week stop two tanks ten thousand barrel with three *sixtenths* water top eighty four hundred forty dollars knocked down eleven thousand nine hundred eighty dollars erected or with quarter inch water top eighty seven hundred sixty dollars knocked down twelve

(Testimony of C. R. Bird.)

thousand two hundred ninety dollars erected stop two five thousand barrel tanks with three sixteenths water top fifty one hundred ten dollars knocked down seventy six hundred fifty dollars erected or with quarter inch water top fifty two hundred seventy dollars knocked down seventy eight hundred thirty dollars erected stop all these tanks our standard sizes and specifications ship one week ship two condensers ten by six by forty feet thirteen hundred, ten dollars knocked down twenty four hundred dollars erected all plates quarter inch our standard drawing ship five weeks stop all prices net to you delivered Los Angeles no paint camp or hauling beyond standard general conditions requirements no foamite connections as this firm will not sell same to us all prices per item stop also quote six standard fifty five with three sixteenths cone roof at twenty three thousand three hundred sixty five dollars each erected Los Angeles net to you ship starting immediately also advise you rail and water shipment would cut about eight hundred dollars per tank more basing price delivered San Pedro harbor confirming.

Graver Corporation

Phillips.

This was about the first week in February, 1924. This bill of sale was delivered and acknowledged October 10th, but it was executed before that. The initial payment was \$3,000. and we paid \$3,000. a month thereafter until the total of nine payments were made.

(Testimony of H. P. Grimm.)

H. P. GRIMM,

witness on behalf of plaintiff:

I am in the oil business and am associated with George F. Getty, and was associated with him in the month of February, 1924; have been associated with him for three years past. Referring to Plaintiff's Exhibits 1, 2 and 3 for identification, I saw these in our office when they were signed in the presence of Mr. Holland, Mr. Bird and Mr. Mattei. I think there were three of each and they were all the same.

Q Did you hear a discussion between Mr. Bird and Mr. Holland as to Holland's authority to sign these contracts?

A Yes, sir.

Q What was said?

This was objected to on the ground it was incompetent, irrelevant and immaterial, and the objection overruled. Defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 11.)

Bird questioned Holland as to whether he had authority to act for the Graver Corporation. Holland said several times that he did, and said he had a letter and he showed us a letter from Graver Corporation on their stationery signed by one of the Gravers, tending to show Holland had authority to act for Graver Corporation.

Testimony as to the contents of this letter was objected to on the ground that the same was incompetent, irrelevant and immaterial and without founda-

(Testimony of Andrew Mattei, Jr.)

tion, and the objection overruled. Defendant duly excepted.

(DEFENDANT'S EXCEPTION NO. 12.)

I remember the letter distinctly because Holland said, "Here is a letter from Graver Corporation with their heading on," tending to show that he represented the Graver Corporation, and he folded it back and just let us see a part of the letter with the signature on. I saw the whole letter; it was signed by one of the Gravers whose initials begin with a "W".

Referring to Defendant's Exhibit No. 103 attached to deposition, witness said:

I received that telegram.

The check of George F. Getty, Plaintiff's Exhibit 7, was introduced in evidence as follows. It was admitted that this was received and paid.

CROSS-EXAMINATION.

I never saw any of the Gravers; I don't know that I ever saw any of their signatures except on a contract between Paul Getty and the Graver Corporation. This letter I refer to was signed by Graver but I do not recognize the signature. The name of Graver appeared there, that is all.

When the check for \$9,000. was paid, there was \$9,000. balance due for Getty Tank No. 2.

ANDREW MATTEI, JR.,

witness on behalf of plaintiff, testified as follows:

I am treasurer of Hercules Gasoline Company. I saw Plaintiff's Exhibits 1, 2 and 3 for Identification

(Testimony of Andrew Mattei, Jr.)

in Getty's office February 7, 1924; there was an original and two copies of each; I saw them signed; Holland, Bird and Grimm were present. Bird and Grimm were skeptical about Holland's authority; he produced a letter with Graver Corporation printed on it at the head and folded it over and showed the lower portion. The contents of that portion was that Holland had full authority to act for Graver in and around Los Angeles; it was signed Graver Corporation by W. F. Graver. Holland stated he had authority to act for Graver Corporation. I afterwards met W. F. Graver at the Biltmore Hotel April 10, 1924; Holland and Bird were also present. We asked what they were going to do with reference to the 80,000 barrel tank from Getty. They said they had a deal on with the Western Refining Company and they were going down to close the deal. Mr. Graver referred to Mr. Holland as "our Mr. Holland" and stated "We are going down to the Western Refinery with reference to the tank" and that everything will be shipped according to our order in a short time.

CROSS-EXAMINATION.

I did not ask for a copy of that letter, which letter was folded over so that I only saw part of it. We asked for additional evidence of Holland's authority, and we went down to the bank to obtain this, but the gentleman at the bank was not in and we never went back. I don't know the date of the letter. W. F. Graver's name was apparently signed to it. I could not verify the signature of Mr. Graver. I never

(Testimony of William G. Talbot.)

talked with Mr. Graver about this letter having been shown me, or did not ask him if such a letter was authentic.

WILLIAM G. TALBOT,

a witness on behalf of the plaintiff:

I am local manager of the Western Pipe and Steel Company; have been for eight years and was in 1924. I know Graver Tank #2, 80,000 bbl. tank; our company purchased this from Hercules for \$12,000.

During 1924 I was familiar with the market price of tanks. I saw this tank. Its market value in the condition we found it was \$12,000; the tank was not set up. It was scattered about on the Getty property and was knocked down. I think the market value would be \$12,000; we subsequently disposed of it to the Pacific Oil Company for \$28,500. We first collected it and hauled it in to our plant where it was unloaded and stored. We sold it directly, we had to furnish the materials, bolts, etc. which amounted to \$1000. It was erected four miles from Taft, Kern County. The actual cost, including labor and factory expense and cartage from Los Angeles to the tank site aggregated \$27,000; this included \$12,000 paid by us for the tank.

CROSS-EXAMINATION.

I can produce statement from our books showing items referred to, steel at that time, the market price was around $2\frac{1}{2}\phi$ a pound.

(Testimony of S. Reid Holland.)

REDIRECT EXAMINATION.

We purchased this tank in May, 1924.

WHEREUPON the plaintiff rested.

Defendant here made a motion for a nonsuit upon the grounds that plaintiff had not established facts sufficient to enable it to recover; on the further ground that plaintiff had not proved or established the essential allegations of the complaint; on the further ground that it did not appear that the contract alleged in the complaint was ever executed or existed between plaintiff and defendant. Motion for nonsuit was denied and defendant excepted.

(DEFENDANT'S EXCEPTION NO. 13.)

Defendant here moved the court to strike out the various matters and things read by plaintiff's counsel from depositions and exhibits tendered or offered in evidence herein, upon the ground that the same had not been connected up, or a foundation laid therefor, as counsel represented it would be laid. This motion was denied and defendant excepted.

(DEFENDANT'S EXCEPTION NO. 14.)

The following evidence was then introduced by the defendant:

S. REID HOLLAND:

I am a manufacturer's representative, have been for four years last past. I represent several eastern firms; I solicit business for them; I have an office in this city; I pay the rent; no one pays any of that expense. My method in getting business is to obtain quotations from manufacturers and then add my

(Testimony of S. Reid Holland.)

profit on any sale that is made. I never had any contract of employment with Graver Corporation; our arrangement was that they quoted me net prices on every inquiry and I added my profit and made the quotation to any prospective customer. If I ever received an order I sent it direct to the manufacturer for approval.

Referring to Plaintiff's Exhibit 2, there are two pages of printing entitled "Standard General Conditions". They are the standard field conditions of Graver Corporation covering all contracts.

Referring to Plaintiff's Exhibit 2, that was signed by me. There were three or four copies made at that time; they were left in Getty's office first unsigned by me subject to the payment by Getty of \$9000. I returned a few days later and found the check available. Mr. Getty had signed one of the copies. Mr. Bird, on behalf of the Hercules, signed three. I took Getty's copy and the check and asked for the other two, but was told they had been mislaid. I obtained two copies signed by Mr. Bird for the Hercules and sent those papers all to Graver Corporation for approval. The standard general conditions on the back were attached to all the copies, that is, the Hercules contract; the Getty contract did not require it because it had nothing to do with erection.

The payment of \$9000 was an unpaid balance due from Getty to Graver on Tank No. 2. I obtained the order for and sold this tank for Graver Corporation.

(Testimony of S. Reid Holland.)

I never made any contract at any time in the name of Graver Corporation. I obtained my instructions to act from the Graver Corporation. Each case was handled on its own basis; I never was at the company's plant.

Early in February I went to Getty's office and met Bird and Mattei of the Hercules. Grimm on behalf of Getty wanted me to help them out on this tank that they owed \$9000 on. I had a letter in my possession then from one of the Gravers, I think P. S., telling me that his brother would be in California in a short time, but there was no reference made to this other matter therein, although there might have been some reference to Getty's past due account, but there was no literal authority or anything to that effect. I have looked and cannot locate any such letter. I introduced Bird and Mattei to Mr. Anderson at the First National Bank so they could get their own information about Graver Corporation. There never was any authorization or authority for me to act as agent in this bank. We went to the bank for them to look up the Graver Corporation, and no mention was made at the bank of my authority.

Contract was signed in triplicate so they could be sent to Chicago for approval, and a copy for each one of the principals. I explained this to Mr. Bird that two copies would be sent to Chicago for approval and returned to him and his copy retained as a memorandum only until the others could be approved.

(Testimony of W. G. Talbot—S. Reid Holland.)

CROSS-EXAMINATION OF W. G. TALBOT.

The witness produced a statement showing that this company paid \$12,900 odd dollars to put the tank in shape to sell; of this labor was \$6600, freight and hauling \$4000, hotel expenses \$400, compensation insurance \$390, grease, ice, etc., \$359; electricity for running line to operate compressor, \$526; power consumed, \$344. This with the purchase price made a total of \$26,000 some odd dollars.

This was regular plate steel and had a regular market value all over the country and was staple. This was worth \$45 a ton in this market, but this cost does not include the fabrication, \$15 would not be an excessive fabrication cost in Chicago where this was fabricated. Market price is based on Pittsburgh plus freight.

EXAMINATION OF MR. HOLLAND (Continued.)

Since adjournment yesterday I made a search for letter from Graver Corporation to myself, and particularly the letter referred to in the testimony of Mr. Grimm, Mr. Mattei and Mr. Bird. I have found that letter and I produce it. This letter was produced the latter part of January and shown to Mr. Grimm under the following circumstances:

We met to discuss this Tank No. 2, upon which Getty owed \$9000. I stated in order to arrive at any deal it would be necessary for Getty to pay the balance due. I said that if they would sell it to Hercules we would endeavor to make some arrangement whereby a trade could be effected. The price of the

(Testimony of S. Reid Holland.)

tank was discussed. The question was asked by the Hercules people whether Graver would trade that tank for other materials; I told him I thought that I could place this tank if I had time enough. Mr. Bird said they had six to nine months before they would need any materials and that would be ample time to turn the tank. Mr. Grimm suggested some question whether I represented Graver. I happened to have this letter in my pocket in reference to the Graver-Getty account and I took it out and folded it over that portion which referred to the details of the Getty account and showed the heading and the last clause of the letter indicating that I was in a position to close the Getty account. I was interested in that account because I had a commission coming and was anxious to close the account. I concealed the rest of the letter because there were some comments there about Getty being slow pay that I did not care to show these other gentlemen.

Defendant's Exhibit "B" was here introduced in evidence after the words "as hereinafter shown there is a crease showing that at one time it had been folded at that place," and after the crease is the sentence, "Trusting you will get after Getty, etc."

This letter was creased and folded as it now appears at that time, and this is what I showed them. I was familiar with the value of tankage in 1924 in this market. There was 308 tons in this tank, the market value was \$80 a ton fabricated and knocked down f. o. b. This \$80 a ton is figured upon at Pittsburgh

(Testimony of S. Reid Holland.)

or Chicago plus freight to Los Angeles, plus fabrication cost, plus handling. Steel of this character does not deteriorate within a few months, in fact, it should stay out a year without any depreciation; in fact, these tanks are generally left unpainted for possibly a year and no rust sets in until the mill scale is off. That tank was absolutely new and the total value was \$24,000 during these months. These figures are substantiated by printed figures in the standard magazines of the industry.

I signed these contracts dated February 7th to Graver in the early part of March, I believe, about the 14th. I delayed because I wanted to get Getty's check and that specification from Hercules so as to show Graver what they wanted to exchange. I discussed this matter with Mr. Bird and stated that the contracts as far as they were concerned would have to go to Chicago with specifications for Graver's approval. I never made a contract in my life for Graver that was not approved at the home office.

Referring to conference at the Biltmore Hotel with Mr. Graver, Mr. Mattei and Mr. Bird, Mr. Graver said that his corporation had turned down the proposition until a customer was obtained for the tank. Mr. Graver explained that we had been to the office of the Western Refining Company and that probably they might buy the tank within a short time. Mr. Graver at that time did not agree to fulfill the contract or make a settlement; Mr. Graver stated that the tank did not belong to the Graver Corporation. I

(Testimony of S. Reid Holland.)

never showed any other letter than the one I have introduced in evidence, and I never had any letter of authority from Graver to make a sale or contract except I had authority to adjust the Getty balance of \$9,000.

CROSS-EXAMINATION.

These contracts were prepared in my office, an original and two or three copies; they were identical in all respects. I told Bird that this contract would have to go to Chicago for approval. This was before the contracts were signed.

This witness testified that his deposition had been taken in this action on October 24, 1924. The witness was asked if he did not recall that Mr. Mattei or Mr. Grimm or Mr. Bird asked him as to his authority to represent the Graver Corporation. In that deposition the witness answered, "Not specifically as such". The witness was further asked in that deposition if one of those three gentlemen did not ask as to his authority to represent the Graver Corporation, and if he did not reply that he was their agent here and authorized to represent them. His answer to that question was that he did not make such a statement, but that he stated that he represented Graver Corporation in that he was in a position to submit proposals of this character and take orders subject to Graver Corporation's confirmation. The witness stated further that he did not recall at that conversation that he showed Mr. Grimm or Mr. Bird a letter from Graver Corporation authorizing him to act. The witness stated further

(Testimony of C. R. Bird.)

in that deposition that he did not show Mr. Bird or Mr. Mattei a letter signed by Graver Corporation authorizing him to act and represent them here in any capacity, and that he never had such a letter.

C. R. BIRD,

a witness on behalf of defendant:

I negotiated the sale of the tank to the Western Pipe and Steel. I did not inquire the market price of steel at that time. I asked three oil companies and I think a fourth, and the Lacy Manufacturing Company if they would buy it, but they would not. Referring to Plaintiff's Exhibit 1, this required Getty to move the tank from Santa Fe Springs at Getty's expense, but we did not require Getty to pay that moving expense or endeavor to charge it to him.

CROSS EXAMINATION.

I never had a conversation with Mr. Holland to the effect that the contracts had to go to Chicago for approval.

It was here stipulated between counsel that Mr. Wm. E. Lacy, if called, would testify that he is qualified as an expert and manufacturer of oil tanks, and was in 1924. This tank weighed 595,000 lbs.; the market value of the steel as this was punched and ready for erection was $3\frac{1}{2}\phi$ a pound, or a total of \$20,825.

Same stipulation was entered into with reference to the testimony of Mr. Lewis, except that he stated the

(Testimony of C. R. Bird.)

market value of this tank was \$23,300 in March, \$23,000 in April and \$22,700 in May.

The defendant hereupon introduced in evidence the depositions on file, portions of which had been read. This was received with the stipulation that the words written on the pages of the contract between Hercules and Graver and Graver and Getty, as follows: "Approved Graver Corporation, East Chicago, Indiana, By.....", were not written there when these papers were made in Los Angeles; that is, they were made and signed here.

PLAINTIFF'S REBUTTAL.

C. R. BIRD

Mr. Holland never stated that the contracts would be subject to approval in Chicago. Our copies were delivered the day they were signed. Referring to Defendant's Exhibit "B", I never saw that letter before.

CROSS EXAMINATION.

My recollection is that this letter was written on white paper. It was so far away from me I couldn't read it, but that portion I did see was the last paragraph. It seemed to be a business letter signed Graver Corporation by W. F. Graver. The Graver Corporation name was typewritten. I don't remember the wording, but the gist of it was that Holland was their authorized agent. I never asked to see the letter again, and I don't know to whom it was addressed or the date of it.

(Testimony of H. P. Grimm—Andrew Mattei.)

H. P. GRIMM,

witness for the plaintiff in rebuttal:

Mr. Bird questioned Holland about his authority to act for Graver, and Holland made some remark, let them go over to the bank to satisfy them. Referring to Defendant's Exhibit "B" I never saw that letter.

CROSS EXAMINATION.

The color of the paper the letter was written on was white. There was a printed heading on it. I saw it before it was folded but did not read it, but I did read the heading. I read the bottom part, I don't know how many lines there were, probably three inches.

ANDREW MATTEI,

a witness in rebuttal on behalf of plaintiff:

Referring to Defendant's Exhibit "B", I never saw that letter until this morning.

CROSS EXAMINATION.

The only part of the letter I saw was Graver Corporation and it was addressed S. Reid Holland. I did not pay any attention to it until it was folded. I don't know the date. I read the bottom portion when he handed it over to be read. I therefore concluded that this Exhibit "B" is not the letter, because it does not give general authority to Holland.

(Testimony of William G. Talbot.)

WILLIAM G. TALBOT,

witness in rebuttal:

Referring to Defendant's Exhibits "C" and "D", prices given by Mr. Lewis and Mr. Lacy, I can explain the discrepancy because these figures are based on their 80,000 barrel tank, and I imagine they base these figures on full profit, and there was lower quotation at that time for knocked down fabricated tanks. There would not be any difference between new tanks and those which had been lying around for awhile, that is, not to any great extent; plate steel does not deteriorate a great deal by being in the open. This plate was in very good condition, but it was not our standard; we sell our standard products, not the make of another manufacturer. There is a difference between the price at which we would sell a tank and the price at which we would buy it.

The defendant presents the foregoing as its bill of exceptions herein and prays that the same may be settled, allowed and certified as part of the record herein.

Wilbur Bassett

Carroll Allen

Attorneys for Defendant.

THIS IS TO CERTIFY that the foregoing Bill of Exceptions tendered by the defendant is correct in

every particular and is hereby settled and allowed and made a part of the record in this cause.

Done in open court this 16th day of March, 1926.

Edward J. Henning

United States District Judge.

[Endorsed]: No. 1735-B Dept. Law In the District Court of the United States in and for the Southern Dist. of California Southern Division Hercules Gasoline Co. a corporation plaintiff vs. Graver Corporation defendant Engrossed Bill of Exceptions. Filed Mar 16 1926 Chas. N. Williams, Clerk. By R S Zimmerman Deputy Clerk. Wilbur Bassett attorney at law 432 Van Nuys Building Los Angeles, Cal.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

HERCULES GASOLINE CO.,)	
a corporation,	)	No. 1735-B.
)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	
GRAVER CORPORATION,)	
)	
)	
Defendant.)	

STIPULATION

The parties hereto by their respective counsel hereby consent that the Court may sign, settle and allow the

Bill of Exceptions of plaintiff in error herein within ten (10) days from the 6th day of March, 1926.

McComb & Hall

Attorneys for Plaintiff.

Carroll Allen

Wilbur Bassett

Attorneys for Defendant.

Dated March 6, 1926.

[Endorsed]: No. 1735-B Dept. Law In the District Court of the United States in and for the Southern District of California Southern Division. Hercules Gasoline Co., a corporation, Plaintiff vs. Graver Corporation Defendant Stipulation Filed Mar 16 1926 Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk. Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles, Cal. Main 6677 Attorney for.....

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

HERCULES GASOLINE CO.,)	
a corporation,)	
)
)
)
Plaintiff,)	
)
vs.)	No. 1735-B Law.
)
GRAVER CORPORATION,)	
)
)
Defendant.)	

PETITION FOR WRIT OF ERROR.
TO THE HON. EDWARD J. HENNING,

Judge of said Court:

Comes now Graver Corporation, by Wilbur Bassett and Carroll Allen, Esqs., as its attorneys, and, feeling itself aggrieved by the final judgment of this Court entered against it in favor of plaintiff on the 7th day of December, 1925, hereby prays that Writ of Error may be allowed to it from the Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States in and for the Southern District of California; and in connection with this petition petitioner herewith presents its Assignment of Errors.

Wilbur Bassett

Carroll Allen

Attorneys for Plaintiff in Error.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

HERCULES GASOLINE CO.,)	
a corporation,)	
)
	) Plaintiff,) No. 1735-B Law.
)
vs. )	) ASSIGNMENT
	) OF ERRORS.
GRAVER CORPORATION,)	
)
	) Defendant.)

And now comes the plaintiff in error, by Wilbur Bassett and Carroll Allen, Esqs., its attorneys, and in connection with its petition for a Writ of Error says that the record, proceedings and in the final judgment aforesaid manifest error has intervened to the prejudice of the plaintiff in error, to wit:

1. The Court erred in not sustaining the demurrer of the plaintiff in error and the defendant below to the complaint.
2. The Court erred in not sustaining the demurrer of the defendant to the evidence of the plaintiff, made at the close of plaintiff's case.
3. The Court erred in admitting the following evidence:

(a) "MR. McCOMB: We are offering that letter (Exhibit 6) for that statement, to show that there was an agency.

MR. BASSETT: To which we object on the ground it is equivocal and remote; that it doesn't tend to show that this man has been treated, will be treated, or ever has been treated, as an agent, or, if he was, whether it was a general agency, a special agency, a mere authority to send in offers, or what it is. This court certainly will not gamble upon an equivocal statement of that sort, which is merely a part of a letter, which says, 'We have treated our agents in a certain way'.

THE COURT: The objection is overruled, and it will be received for what it is worth. Of course it is not proof of agency, but it tends in that direction."

(b) "Plaintiff here introduced Defendant's Exhibit 100 to 103, inclusive, attached to the deposition.

THE COURT: It (Exhibit 103) will be received in the same way, subject to being connected with the transaction.

MR. BASSETT: To which we object on the ground that George F. Getty to whom this wire was sent is not a party to this action nor is there any element in the issues in this case concerned with George F. Getty, and that it is incompetent, irrelevant and immaterial. Here is a wire to another person outside of this case.

THE COURT: It will be received subject to being connected with the transaction."

(c) "Plaintiff here offered in evidence Defendant's Exhibit to Depositions No. 79.

To which offer defendant objected upon the ground that it was irrelevant and merely an order, which objection was overruled.

THE COURT: It will be received, subject to being connected up.

MR. BASSETT: May I at this time, in order to shorten the trial, ask that we be allowed exceptions according to the State practice, without specifically putting them into the record?

THE COURT: Yes."

(d) "Plaintiff here offered in evidence Defendant's Exhibit 'A' (which was duly identified) attached to the deposition.

To which offer defendant objected on the ground that it was incompetent and irrelevant."

(e) "Plaintiff here introduced Defendant's Exhibit No. 10 attached to the deposition.

The introduction of this was duly objected to upon the ground that it was incompetent, irrelevant and immaterial, and the objection overruled, to which defendant excepted."

(f) "Plaintiff here offered Defendant's Exhibit 11 attached to the depositions.

To which offer of Exhibit No. 11 defendant objected on the ground that the same was incompetent and immaterial.

The court admitted this evidence subject to being connected up; to which ruling defendant duly excepted."

(g) "Plaintiff thereupon offered Exhibit No. 38 to the Depositions of Defendant.

To the introduction of which defendant objected upon the ground that the same was incompetent, irrelevant and immaterial. The objection was overruled. Defendant duly excepted."

(h) "Plaintiff here offered Defendant's Exhibits 16, 37, 38, 39, 138, 139, 142 and 144, as to that portion of those exhibits which contained on the stationery of S. Reid Holland the following: 'Graver Corporation, inter office correspondence, Date, File No. To, Address, From.' To which evidence the defendant objected on the ground the same is incompetent, irrelevant and immaterial. The objection was overruled and the evidence admitted subject to being connected."

(i) "Q Did you have any conversation with Mr. Holland regarding his authority to represent the Graver Corporation?

This was objected to on the ground it is incompetent, irrelevant and immaterial. The objection was overruled."

(j) "I am the Holland referred to in these agreements. I do not have the letter that Mr. Bird refers to; I never did have; I have looked every place where I ordinarily place letters. Do not recall ever seeing any letter of that description.

Whereupon defendant renewed its objections to any evidence regarding said letter, and moved to strike

evidence concerning the same out. This objection was overruled and motion denied.”

(k) “Q Did you hear a discussion between Mr. Bird and Mr. Holland as to Holland’s authority to sign these contracts?

A Yes, sir.

Q What was said?

This was objected to on the ground it was incompetent, irrelevant and immaterial.”

(1) “Bird questioned Holland as to whether he had authority to act for the Graver Corporation. Holland said several times that he did, and said he had a letter and he showed us a letter from Graver Corporation on their stationery signed by one of the Gravers, tending to show Holland had authority to act for Graver Corporation.

Testimony as to the contents of this letter was objected to on the ground that the same was incompetent, irrelevant and immaterial and without foundation, and the objection overruled.”

(m) “Defendant here moved the court to strike out the various matters and things read by plaintiff’s counsel from depositions and exhibits tendered or offered in evidence herein, upon the ground that the same had not been connected up, or a foundation laid therefor, as counsel represented it would be laid.”

By reason whereof plaintiff in error prays that the judgment aforesaid may be reversed.

Carroll Allen

Wilbur Bassett

Attorneys for Plaintiff in Error.

[Endorsed]: No. 1735-B Dept. Law In the District Court of the U. S. In and for the Southern District of California Southern Division. Hercules Gasoline Co., a corporation, Plaintiff vs. Graver Corporation Defendant Petition for Writ of Error and Assignment of Errors. Filed Apr 7 1926 Chas. N. Williams, Clerk By R S Zimmerman Deputy Clerk. Wilbur Bassett Attorney at Law 432 Van Nuys Bulding Los Angeles, Cal. Attorney for.....

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

HERCULES GASOLINE CO.,)	
a corporation,)	
	) No. 1735-B Law.
Plaintiff,)	
	) ORDER
vs. )	) ALLOWING
	) WRIT OF
GRAVER CORPORATION, )	) ERROR
)
Defendant.)	

Upon motion of Wilbur Bassett, Esq., attorney for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered

herein and that the amount of cost bond on said writ of error be and hereby is fixed at Three hundred.

April 7, 1926.

Wm P James

District Judge

[Endorsed]: No. 1735-B Dept. Law In the U. S. District Court In and for the Southern Dist. of California, Southern Division. Hercules Gasoline Co. a corporation plaintiff vs. Graver Corporation defendant. Order Allowing Writ of Error. Filed Apr. 7 1926 Chas. N. Williams, Clerk By L. J. Cordes Deputy Clerk. Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

- - - - -		)	No. 1735-B.
HERCULES GASOLINE COM-)	
PANY, a corporation,)	
	Plaintiff,	)	BOND ON
		)	APPEAL
vs.)	
)	
GRAVER CORPORATION,)	
	Defendant.	)	The premium
		)	charged for this
- - - - -		)	bond is \$10.00
		)	dollars per
		)	annum.

KNOW ALL MEN BY THESE PRESENTS:

That we, GRAVER CORPORATION, a corporation, as Principal, and FIDELITY & DEPOSIT COMPANY OF MARYLAND, a corporation, as Surety, are held and firmly bound unto Hercules Gasoline Company in the sum of Three Hundred Dollars (\$300.00) lawful money of the United States, to be paid to said Hercules Gasoline Company and its successors, for which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, as well as our successors, firmly by these presents.

Dated this 10th day of April, 1926.

WHEREAS, the above-named Graver Corporation has prosecuted a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment of the District Court of the Southern District of California, Southern Division, in the above-entitled cause;

NOW THEREFORE, the condition of this obligation is such that if the above-named Graver Corporation shall prosecute its said appeal to effect, and answer for all damages, costs and interest if it fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and effect.

GRAVER CORPORATION

[Seal]

By Carroll Allen

Its Agent and Attorney.

FIDELITY & DEPOSIT COMPANY
OF MARYLAND

[Seal]

By Fred S. Hughes

Its Resident Agent and Atty in fact.

STATE OF CALIFORNIA)

) ss.

County of Los Angeles)

On this 10th day of April, 1926, before me ELSIE E. ARMSTRONG, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared FRED S. HUGHES known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland and acknowledged to me that they sub-

scribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact.

[Seal]

Elsie E. Armstrong

Notary Public in and for the State of California
County of Los Angeles.

I hereby approve the foregoing bond. Dated the
14th day of April, 1926

Wm P James

Judge

[Endorsed]: No. 1735-B. In the District Court
of the State of California in and for the County of
Los Angeles Hercules Gasoline Company, Plaintiff
& Respondent vs. Graver Corporation, Defendant &
Appellant. Bond on Appeal. Filed Apr 12 1926.
Chas. N. Williams, Clerk By L. J. Cordes Deputy
Clerk. Carroll Allen Attorney at Law Stock Ex-
change Building Los Angeles, Cal. 875-777 Attor-
ney for Appellant

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

HERCULES GASOLINE CO.,)
a corporation,)
Plaintiff,) No. 1735-B Law.
vs.)
GRAVER CORPORATION,) PRAECIPE
Defendant.) FOR RECORD.

The Clerk of this Court is hereby directed to prepare and certify a transcript of the record in the above entitled cause for the use of the United States Circuit Court of Appeals for the Ninth Circuit, by including therein the following:

1. Complaint;
2. Demurrer to Complaint;
3. Order overruling demurrer;
4. Order removing cause from Superior Court of the State of California to the District Court of the United States;
5. Answer;
6. Demand for Bill of Particulars;
7. Bill of Particulars.
8. Bill of Exceptions;
9. Findings of Fact and Conclusions of Law;
10. Judgment;
11. Notice of Motion for a New Trial;
12. Order Denying Motion for New Trial;

13. Opinion of Henning, J., on Denying Motion for New Trial;

14. All minutes of the Court and orders and decrees made in the case;

15. All certificates made by the Clerk of this Court with reference to the proceedings, rulings and decrees of the Court;

16. The petition for Writ of Error and plaintiff's Assignment of Errors, orders of the Court and the Judge in Chambers relating thereto;

17. The Undertaking on Appeal;

18. The Certificate of the Clerk to the Correctness of the Record on Writ of Error herein;

19. Writ of Error.

20. All endorsements;

21. Stipulation for Settlement of Bill of Exceptions.

Dated this day of March, 1926.

Wilbur Bassett

Carroll Allen

Attorneys for Plaintiff in Error.

[Endorsed]: In the U. S. District Court in and for the Southern District of California, Southern Division. Hercules Gasoline Co. plaintiff, vs. Graver Corporation, defendant. Praeceptum for Record. Filed Apr 7 1926. Chas. N. Williams, Clerk By L. J. Cordes, Deputy Clerk. Wilbur Bassett Attorney at Law 432 Van Nuys Building Los Angeles, Cal.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

- - - - -
 HERCULES GASOLINE CO.,)
 a corporation,)
) No. 1735-B Law.
 Plaintiff,)
)
 vs.) CLERK'S
) CERTIFICATE.
 GRAVER CORPORATION,)
)
 Defendant.)
 - - - - -

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 98 pages, numbered from 1 to 98 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by the plaintiff-in-error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, complaint, order for removal, demurrer, order overruling demurrer, answer, demand for bill of particulars, bill of particulars, minute order denying motion for new trial and to vacate judgment, minutes of the court, findings of fact and conclusions of law, judgment, motion for new trial and notice, bill of exceptions, stipulation for settlement of bill of exceptions, petition

for writ of error, assignment of errors, order allowing writ of error, bond on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to..... and that said amount has been paid me by the plaintiff-in-error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this.....day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-six, and of our Independence the One Hundred and Fiftieth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.